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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/506,361 | 02/18/2000 | Marc Howard Spinoza | FIFW-019US | 8242 |
| 33425 7590 06/24/2008 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701 | | | | |
| EXAMINER | | | | |
| VU, QUYNH-NHU HOANG | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3763 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/506,361

Applicant(s)

SPINOZA, MARC HOWARD

Examiner

QUYNH-NHU H. VU

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 81-100 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 81-100 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date: _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

Response to Amendment

Amendment filed on 4/17/08 has been entered.

Claims 81-100 are present for examination.

Claims 1-80 are cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 81-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sobin et al. (US 4,509,877) in view of Delk et al. (US 5,292,312).

Sobin discloses a fastener comprising: a tubular sleeve 6 of variable length having a first aperture through which the tube 11 can pass at a first end of the sleeve and a second aperture through which the tube can pass at the second end of the sleeve; wherein the tubular sleeve 6 is flexible strands, therefore it is capable when lengthened of gripping a tube and when shortened of sliding along the tube; wherein the tubular sleeve 6 further comprises attachment means (3, 4, 5); wherein the attachment comprises a flange 5 or 3; wherein the sterile tubular sleeve 6 exerts a pressure (such as the tubular sleeve is stretched, Fig. 2, col. 4, line 35-col. 5, line 20) distributed over an elongate portion of the tube when the sleeve is lengthened to grip the tube; the tubular sleeve 6 has a ring 7 or 8 (Figs. 2-3) at one end of the sleeve, the ring surrounding the aperture.

Additionally, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, i.e., "the tube can pass...along the tube" of claims 1, 95; "a pad of flange for lying against part of the patient's body" of claim 85; "the pad or flange can be adhered or sutured to the patient's body" of claim 86, "an opening is capable of permitting the tube..." of claim 87;

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"the ring being operable to shorten or length of the sleeve" of claims 92, 95; functional limitations, do not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim, see *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974).

Sobin discloses the attachment means (3, 4, 5) attaching the sleeve but does not specifically disclose that the attachment means attached to a patient.

Delk discloses a medical conduit holder for securing medical conduits to the patient comprising: an attachment means 30 and 20 (Fig. 2) or strap 30 (Figs. 3-6) are attached to a medical conduit C (such as catheter/tube) to a patient.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Sobin with a attachment means attached to the patient, as taught by Delk, in order to securing medical conduit to the skin of a patient.

Regarding claim 83, Sobin in view of Delk disclose the invention substantially as claimed. Sobin does not disclose the loop is formed by doubling over the sleeve. However, it is common sense that one skill in the art would recognize that the loop formed of doubling for increasing strengthens.

Response to Arguments

Applicant's arguments with respect to claims 81-100 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to QUYNH-NHU H. VU whose telephone number is (571)272-3228. The examiner can normally be reached on 6:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763

Quynh-Nhu H. Vu
Examiner
Art Unit 3763